

# House Bill 2316

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands offense of driving while under influence of intoxicants to include any substance that, when taken into human body, can impair the ability of person to operate vehicle safely. Defines "intoxicant" for purposes of Oregon Vehicle Code.

Permits conviction of driving while under influence of intoxicants even if accusatory instrument does not plead fact that person was under influence of controlled substance or inhalant.

Provides that once individual is convicted of felony driving while under influence of intoxicants, any subsequent episode of driving while under influence of intoxicants is Class C felony regardless of amount of time that intervenes between offenses.

## A BILL FOR AN ACT

1  
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending  
3 ORS 146.113, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040, 813.131, 813.215,  
4 813.220, 813.300, 813.430, 813.602 and 821.250.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of the Oregon Vehicle**  
7 **Code.**

8 **SECTION 2. "Intoxicant" means:**

9 **(1) Intoxicating liquor;**

10 **(2) A controlled substance;**

11 **(3) An inhalant;**

12 **(4) Cannabis;**

13 **(5) Psilocybin; or**

14 **(6) Any drug, as defined in ORS 475.005, either alone or when used in combination with**  
15 **intoxicating liquor, an inhalant, psilocybin, cannabis or a controlled substance.**

16 **SECTION 3. ORS 813.010 is amended to read:**

17 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if  
18 the person drives a vehicle while the person:

19 (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by  
20 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

21 *[(b) Is under the influence of intoxicating liquor, cannabis, psilocybin, a controlled substance or*  
22 *an inhalant;]*

23 *[(c) Is under the influence of any combination of intoxicating liquor, cannabis, psilocybin, a con-*  
24 *trolled substance and an inhalant; or]*

25 **(b) Is under the influence of an intoxicant or a combination of intoxicants; or**

26 *[(d)]* **(c) Within two hours after driving a vehicle, and without consuming alcohol in the inter-**  
27 **vening time period, has 0.08 percent or more by weight of alcohol in the blood of the person, as**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140  
 2 or 813.150.

3 [(2) *A person may not be convicted of driving while under the influence of intoxicants on the basis*  
 4 *of being under the influence of a controlled substance or an inhalant unless the fact that the person*  
 5 *was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instru-*  
 6 *ment and is either proved at trial or is admitted by the person through a guilty plea.*]

7 [(3)] (2) A person convicted of the offense described in this section is subject to ORS 813.020 in  
 8 addition to this section.

9 [(4)] (3) Except as provided in subsection [(5)] (4) of this section, the offense described in this  
 10 section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable  
 11 upon any premises open to the public.

12 [(5)(a)] (4)(a) Driving while under the influence of intoxicants is a Class C felony if the current  
 13 offense was committed in a motor vehicle and the person has, at least three times in the 10 years  
 14 prior to the date of the current offense, been convicted of, or been found to be within the jurisdic-  
 15 tion of the juvenile court for an act that if committed by an adult would be, any of the following  
 16 offenses in any combination:

17 (A) Driving while under the influence of intoxicants in violation of this section.

18 (B) The statutory counterpart to this section in another jurisdiction.

19 (C) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
 20 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of [*intoxicating liquor,*  
 21 *cannabis, psilocybin, a controlled substance, an inhalant or any combination thereof*] **an intoxicant**  
 22 **or a combination of intoxicants.**

23 (D) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a  
 24 boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol con-  
 25 tent.

26 (b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a  
 27 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood  
 28 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a  
 29 person 21 years of age or older does not constitute a prior conviction or adjudication.

30 [(6)] (5) In addition to any other sentence that may be imposed, the court shall impose one or  
 31 more of the following fines on a person convicted of driving while under the influence of intoxicants  
 32 as follows:

33 (a) For a person's first conviction, a minimum of \$1,000.

34 (b) For a person's second conviction, a minimum of \$1,500.

35 (c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sen-  
 36 tenced to a term of imprisonment.

37 (d)(A) For a person who drives a vehicle while the person has 0.15 percent or more by weight  
 38 of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the  
 39 person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

40 (B) For a person who, within two hours after driving a vehicle, and without consuming alcohol  
 41 in the intervening time period, has 0.15 percent or more by weight of alcohol in the blood of the  
 42 person, as shown by chemical analysis of the breath or blood of the person made under ORS 813.100,  
 43 813.140 or 813.150, a minimum of \$2,000.

44 [(7)] (6) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on  
 45 a person convicted of driving while under the influence of intoxicants if:

1 (a) The current offense was committed in a motor vehicle; and

2 (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least  
3 three years younger than the person driving the motor vehicle.

4 **SECTION 4.** ORS 813.011 is amended to read:

5 813.011. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C  
6 felony if at least two times in the 10 years prior to the date of the current offense the defendant  
7 has been convicted of any of the following offenses in any combination:

8 (a) Driving under the influence of intoxicants in violation of ORS 813.010, or its statutory  
9 counterpart in another jurisdiction.

10 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
11 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of [*intoxicating liquor,*  
12 *cannabis, a controlled substance, an inhalant or any combination thereof*] **an intoxicant or a com-**  
13 **bination of intoxicants.**

14 (c) An offense in another jurisdiction that involved driving or operating a vehicle, an aircraft  
15 or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol  
16 content.

17 (2) Once a person has been sentenced for a Class C felony under this section **or under ORS**  
18 **813.010 (4)**, the 10-year time limitation is eliminated and any subsequent episode of driving under  
19 the influence of intoxicants shall be a Class C felony regardless of the amount of time which inter-  
20 venes.

21 (3) Upon conviction for a Class C felony under this section, the person shall be sentenced to a  
22 mandatory minimum term of incarceration of 90 days, without reduction for any reason.

23 **SECTION 5.** ORS 801.272 is amended to read:

24 801.272. "Field sobriety test" means a physical or mental test, approved by the Department of  
25 State Police by rule after consultation with the Department of Public Safety Standards and Training,  
26 that enables a police officer or trier of fact to screen for or detect probable impairment from  
27 [*intoxicating liquor, cannabis, psilocybin, a controlled substance or an inhalant, or any combination*  
28 *of intoxicating liquor, cannabis, psilocybin, a controlled substance and an inhalant*] **an intoxicant or**  
29 **a combination of intoxicants.**

30 **SECTION 6.** ORS 807.060 is amended to read:

31 807.060. The Department of Transportation may not grant driving privileges to a person under  
32 a license if the person is not eligible under this section. The following are not eligible for a license:

33 (1) A person under 16 years of age.

34 (2)(a) A person under 18 years of age who is not an emancipated minor, unless the application  
35 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-  
36 plication under this paragraph may have the driving privileges canceled as provided under ORS  
37 809.320.

38 (b) A person under 18 years of age who does not meet the requirements of ORS 807.065.

39 (3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible  
40 for a commercial driver license.

41 (4) A person the department determines has a problem condition involving [*alcohol, cannabis,*  
42 *psilocybin, controlled substances or inhalants*] **intoxicants** as described under ORS 813.040.

43 (5) A person the department reasonably believes has a mental or physical condition or impair-  
44 ment that affects the person's ability to safely operate a motor vehicle upon the highways.

45 (6) A person the department reasonably believes is unable to understand highway signs that

1 warn, regulate or direct traffic.

2 (7) A person who is required to make future responsibility filings but has not made filings as  
3 required.

4 (8) A person who cannot be issued a license under the Driver License Compact under ORS  
5 802.540.

6 (9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose  
7 driving privileges are currently under suspension or revocation in any other state upon grounds  
8 which, if committed in this state, would be grounds for the suspension or revocation of the driving  
9 privileges of the person.

10 (10) A person who has been declared a habitual offender under ORS 809.640. A person declared  
11 not eligible to be licensed under this subsection may become eligible by having eligibility restored  
12 under ORS 809.640.

13 (11) A person whose driving privileges are canceled in this state under ORS 809.310 until the  
14 person is eligible under ORS 809.310.

15 (12) A person while the person's driving privileges are revoked in this state.

16 (13) A person during a period when the person's driving privileges are suspended in this state.

17 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license  
18 or driver permit. A person who is not eligible under this subsection may become eligible by sur-  
19 rendering the license, driver permit or out-of-state license or driver permit to the department before  
20 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a  
21 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS  
22 807.062 to obtain an Oregon license or permit.

23 (15) A person who has not complied with the requirements and responsibilities created by cita-  
24 tion for or conviction of a traffic offense in another jurisdiction if an agreement under ORS 802.530  
25 authorizes the department to withhold issuance of a license.

26 (16) A person who has not complied with the requirement of ORS 813.022 (1).

27 **SECTION 7.** ORS 809.235 is amended to read:

28 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving  
29 privileges be permanently revoked if the person is convicted of any degree of murder and the court  
30 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the  
31 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in  
32 the first or second degree resulting from the operation of a motor vehicle, criminally negligent  
33 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from  
34 the operation of a motor vehicle.

35 (b) The court shall order that a person's driving privileges be permanently revoked if the person  
36 is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010  
37 or if the person is convicted for a third or subsequent time of any of the following offenses in any  
38 combination:

39 (A) Driving while under the influence of intoxicants in violation of:

40 (i) ORS 813.010; or

41 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

42 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
43 impaired driving of a vehicle due to the use of *[intoxicating liquor, cannabis, psilocybin, a controlled*  
44 *substance, an inhalant or any combination thereof]* **an intoxicant or a combination of intoxicants.**

45 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a

1 blood alcohol content above that jurisdiction's permissible blood alcohol content.

2 (c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in  
 3 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content  
 4 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years  
 5 of age or older does not constitute a prior conviction.

6 (2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-  
 7 tion may file a petition in the circuit court of the county in which the person's driving privileges  
 8 were revoked for an order restoring the person's driving privileges. A petition may be filed under  
 9 this subsection no sooner than 10 years after the person is:

10 (A) Released on parole or post-prison supervision for the crime for which the person's driving  
 11 privileges were revoked and any other crimes arising out of the same criminal episode;

12 (B) Sentenced to probation for the crime for which the person's driving privileges were revoked,  
 13 unless the probation is revoked, in which case the petition may be filed no sooner than 10 years  
 14 after the date probation is revoked; or

15 (C) Sentenced for the crime for which the person's driving privileges were revoked, if no other  
 16 provision of this paragraph applies.

17 (b) Notwithstanding paragraph (a) of this subsection, if during the revocation period for the  
 18 crime for which the person was convicted the person is convicted of a criminal offense involving a  
 19 motor vehicle, the person may file a petition to restore driving privileges as described in paragraph  
 20 (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving  
 21 a motor vehicle.

22 (c) The district attorney of the county in which the person's driving privileges were revoked  
 23 shall be named and served as the respondent in the petition.

24 (3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this  
 25 section. In determining whether to grant the petition, the court shall consider:

26 (a) The nature of the offense for which driving privileges were revoked.

27 (b) The degree of violence involved in the offense.

28 (c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the  
 29 conviction that resulted in the revocation.

30 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-  
 31 chological evaluation ordered by the court to determine whether the person is presently a threat to  
 32 the safety of the public.

33 (e) Any other relevant factors.

34 (4) The court shall order a petitioner's driving privileges restored if, after a hearing described  
 35 in subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

36 (a) Is rehabilitated;

37 (b) Does not pose a threat to the safety of the public; and

38 (c) If the sentence for the crime for which the petitioner's driving privileges were revoked re-  
 39 quired the petitioner to complete an alcohol or drug treatment program, has completed an alcohol  
 40 or drug treatment program in a facility approved by the Director of the Oregon Health Authority  
 41 or a similar program in another jurisdiction.

42 (5) Upon receiving a court order to restore a person's driving privileges, the department may  
 43 reinstate driving privileges in accordance with ORS 809.390, except that the department may not  
 44 reinstate driving privileges of any person whose privileges are revoked under this section until the  
 45 person complies with future responsibility filings.

**SECTION 8.** ORS 809.730 is amended to read:

809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been convicted of:

(a) Driving while under the influence of intoxicants in violation of:

(A) ORS 813.010; or

(B) The statutory counterpart to ORS 813.010 in another jurisdiction;

(b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of *[intoxicating liquor, cannabis, psilocybin, a controlled substance, an inhalant or any combination thereof]* **an intoxicant or a combination of intoxicants;**

(c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content;

(d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction; or

(e) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended or revoked under ORS 163.196.

(2) For the purposes of subsection (1) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(3) All seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 131A.

**SECTION 9.** ORS 813.012 is amended to read:

813.012. (1) The Oregon Criminal Justice Commission shall classify felony driving while under the influence of intoxicants that is committed under the circumstances described in ORS 813.010 ~~[(5)]~~ **(4)** as crime category 6 of the rules of the Oregon Criminal Justice Commission.

(2) In determining criminal history for a person convicted of a felony that has operation of a motor vehicle as an element, or of a felony that involved death, injury or property damage caused by the use of a motor vehicle, the commission shall:

(a) Consider two prior convictions of misdemeanor driving while under the influence of intoxicants to be equivalent to one conviction of felony driving while under the influence of intoxicants; and

(b) Consider felony driving while under the influence of intoxicants to be a person felony and consider misdemeanor driving while under the influence of intoxicants to be a person Class A misdemeanor.

**SECTION 10.** ORS 813.040 is amended to read:

813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has a problem condition involving *[alcohol, cannabis, psilocybin, controlled substances or inhalants]* **intoxicants**. For purposes of ORS 471.432 and 807.060, a person has a problem condition involving *[alcohol, cannabis, psilocybin, controlled substances or inhalants]* **intoxicants** if it is determined that the person has a problem condition in which the person's health or that of others is substantially impaired or endangered or the person's social or economic function is substantially disrupted because of the person's:

(1) Habitual or periodic use of:

1 (a) Alcoholic beverages;

2 (b) Cannabis, unless the person holds a registry identification card as defined in ORS 475C.777;

3 or

4 (c) Psilocybin; or

5 (2) Use of or loss of the ability to control the use of controlled substances, inhalants or other  
6 substances with abuse potential, including a condition that may have developed:

7 (a) A physical dependence in which the body requires a continuing supply of a controlled sub-  
8 stance, an inhalant or a drug to avoid characteristic withdrawal symptoms; or

9 (b) A psychological dependence characterized by an overwhelming mental desire for continued  
10 use of a controlled substance, an inhalant or a drug.

11 **SECTION 11.** ORS 813.131 is amended to read:

12 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection  
13 (2) of this section.

14 (2) Any person who operates a motor vehicle upon premises open to the public or the highways  
15 of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law,  
16 to a chemical test of the person's urine for the purpose of determining the presence of [*cannabis,*  
17 *psilocybin, a controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor** in  
18 the person's body if the person is arrested for driving while under the influence of intoxicants in  
19 violation of ORS 813.010 or of a municipal ordinance and either:

20 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood  
21 alcohol content of less than 0.08 percent; or

22 (b) The person is involved in an accident resulting in injury or property damage. A urine test  
23 may be requested under this paragraph regardless of whether a breath test has been requested and  
24 regardless of the results of a breath test, if one is taken.

25 (3) A police officer may not request a urine test unless the officer is certified by the Department  
26 of Public Safety Standards and Training as having completed at least eight hours of training in re-  
27 cognition of drug impaired driving and the officer has a reasonable suspicion that the person ar-  
28 rested has been driving while under the influence of [*cannabis, psilocybin, a controlled substance, an*  
29 *inhalant or any combination of cannabis, psilocybin, a controlled substance, an inhalant and*  
30 *intoxicating liquor*] **an intoxicant other than intoxicating liquor or a combination of**  
31 **intoxicants.**

32 (4) A person asked to give a urine sample shall be given privacy and may not be observed by  
33 a police officer when producing the sample.

34 (5)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
35 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid  
36 chemical analysis of a person's urine is admissible as evidence and may be used with other evidence,  
37 if any, to determine whether the person was driving while under the influence of intoxicants.

38 (b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or  
39 licensed toxicology laboratory.

40 **SECTION 12.** ORS 813.215 is amended to read:

41 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-  
42 ditions:

43 (a) On the date the defendant filed the petition for a driving while under the influence of  
44 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present  
45 offense, pending for:

1 (A) An offense of driving while under the influence of intoxicants in violation of:

2 (i) ORS 813.010; or

3 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

4 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
 5 impaired driving of a vehicle due to the use of *[intoxicating liquor, cannabis, psilocybin, a controlled*  
 6 *substance, an inhalant or any combination thereof]* **an intoxicant or a combination of intoxicants;**  
 7 or

8 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a  
 9 blood alcohol content above that jurisdiction's permissible blood alcohol content.

10 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-  
 11 section within the period beginning 15 years before the date of the commission of the present offense  
 12 and ending on the date the defendant filed the petition for a driving while under the influence of  
 13 intoxicants diversion agreement.

14 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 ~~[(5)(a)]~~  
 15 **(4)(a)**.

16 (d) The defendant was not participating in a driving while under the influence of intoxicants  
 17 diversion program or in any similar alcohol or drug rehabilitation program in this state or in an-  
 18 other jurisdiction on the date the defendant filed the petition for a driving while under the influence  
 19 of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph  
 20 by reason of participation in a diversion program or any similar alcohol or drug rehabilitation pro-  
 21 gram as a result of the charge for the present offense or a charge for violation of ORS 471.430.

22 (e) The defendant did not participate in a diversion or rehabilitation program described in par-  
 23 agraph (d) of this subsection within the period beginning 15 years before the date of the commission  
 24 of the present offense and ending on the date the defendant filed the petition for a driving while  
 25 under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion  
 26 under this paragraph by reason of participation in a diversion program or rehabilitation program  
 27 described in paragraph (d) of this subsection as a result of the charge for the present offense or a  
 28 charge for violation of ORS 471.430.

29 (f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder,  
 30 manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor  
 31 vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition  
 32 for a driving while under the influence of intoxicants diversion agreement.

33 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-  
 34 section within the period beginning 15 years before the date of the commission of the present offense  
 35 and ending on the date the defendant filed the petition for a driving while under the influence of  
 36 intoxicants diversion agreement.

37 (h) The defendant did not hold commercial driving privileges on the date of the commission of  
 38 the offense.

39 (i) The defendant was not operating a commercial motor vehicle at the time of the offense.

40 (j) The present driving while under the influence of intoxicants offense did not involve an acci-  
 41 dent resulting in:

42 (A) Death of any person; or

43 (B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

44 (2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in  
 45 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content



1 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years  
 2 of age or older does not constitute a prior conviction.

3 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the  
 4 conditions of subsection (1) of this section and the defendant has not been convicted of any other  
 5 criminal offense involving a motor vehicle within the period beginning 15 years before the date of  
 6 the commission of the present offense and ending on the date the defendant filed the petition for the  
 7 second or subsequent driving while under the influence of intoxicants diversion agreement.

8 **SECTION 13.** ORS 813.220 is amended to read:

9 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request  
 10 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether  
 11 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-  
 12 ment. In making a determination under this section, the court:

13 (1) Shall consider whether the diversion will be of benefit to the defendant and the community.

14 (2) May take into consideration whether there was an early recognition by the defendant during  
 15 the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug  
 16 dependency would be beneficial.

17 (3) May take into consideration whether there is a probability that the defendant will cooperate  
 18 with the diagnostic assessment and treatment agencies.

19 (4) May take into consideration whether the defendant will observe the restrictions contained  
 20 in the diversion agreement.

21 (5) May take into consideration whether the offense was committed in a motor vehicle and  
 22 whether there was a passenger in the motor vehicle who was under 18 years of age and at least  
 23 three years younger than the defendant.

24 (6) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 25 agreement if the defendant failed to appear at an arraignment on the present offense without good  
 26 cause.

27 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 28 agreement if, after the date the defendant filed the petition, the defendant was charged with or  
 29 convicted of:

30 (a) An offense of driving while under the influence of intoxicants in violation of:

31 (A) ORS 813.010; or

32 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

33 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
 34 impaired driving of a vehicle due to the use of *[intoxicating liquor, cannabis, psilocybin, a controlled*  
 35 *substance, an inhalant or any combination thereof]* **an intoxicant or a combination of intoxicants;**  
 36 or

37 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a  
 38 blood alcohol content above that jurisdiction's permissible blood alcohol content.

39 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 40 agreement if the defendant participated in a driving while under the influence of intoxicants diver-  
 41 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered  
 42 into as a result of the charge for the present offense, in this state or in another jurisdiction after  
 43 the date the defendant filed the petition.

44 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 45 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular

1 homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the  
 2 operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed  
 3 the petition.

4 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 5 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 [(5)(a)]  
 6 (4)(a).

7 (11) For the purposes of subsection (7) of this section, may not consider a conviction for a  
 8 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood  
 9 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a  
 10 person 21 years of age or older as a prior conviction.

11 (12) May not deny the petition for a driving while under the influence of intoxicants diversion  
 12 agreement solely on the basis that the defendant is a member of the Armed Forces of the United  
 13 States, the reserve components of the Armed Forces of the United States or the National Guard and  
 14 has been called or demonstrates that the defendant will be called to active duty, and the military  
 15 service will impair the defendant's ability to complete the diversion program.

16 **SECTION 14.** ORS 813.300 is amended to read:

17 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
 18 committed by a person driving a motor vehicle while under the influence of intoxicants, if the  
 19 amount of alcohol in the person's blood at the time alleged is less than 0.08 percent by weight of  
 20 alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that  
 21 may be used with other evidence, if any, to determine whether or not the person was then under the  
 22 influence of intoxicants.

23 (2) Not less than 0.08 percent by weight of alcohol in a person's blood constitutes being under  
 24 the influence of intoxicating liquor.

25 (3) Notwithstanding subsection (2) of this section, for purposes of the Motorist Implied Consent  
 26 Law as defined in ORS 801.010, for a person who is under 21 years of age, any amount of alcohol  
 27 in the blood constitutes being under the influence of intoxicating liquor.

28 (4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100  
 29 milliliters of blood or based upon grams of alcohol per 210 liters of breath.

30 (5) ORS 813.010 [(1)(d)] (1)(c) may not be construed to limit the admissibility of any evidence  
 31 of the amount of alcohol in a person's blood as shown by chemical analysis of the person's breath  
 32 or blood, in any civil or criminal action, suit or proceeding arising out of the acts committed by the  
 33 person driving a vehicle while under the influence of intoxicants.

34 **SECTION 15.** ORS 813.430 is amended to read:

35 813.430. This section establishes circumstances under which ORS 813.420 requires an increase  
 36 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase  
 37 in the time before the Department of Transportation may issue a hardship permit. A person is sub-  
 38 ject to an increase in suspension time under this section if any of the following apply:

39 (1) The person is presently participating in a driving while under the influence of intoxicants  
 40 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or  
 41 another jurisdiction.

42 (2) Within the five years preceding the date of arrest any of the following occurred:

43 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-  
 44 ment Part) became effective.

45 (b) The person was convicted of:

1 (A) Driving while under the influence of intoxicants in violation of:

2 (i) ORS 813.010;

3 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction; or

4 (iii) A municipal ordinance in this state or another jurisdiction;

5 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
6 impaired driving of a vehicle due to the use of [*intoxicating liquor, cannabis, psilocybin, a controlled*  
7 *substance, an inhalant or any combination thereof*] **an intoxicant or a combination of intoxicants;**  
8 or

9 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a  
10 blood alcohol content above that jurisdiction’s permissible blood alcohol content.

11 (c) The person commenced participating in a driving while under the influence of intoxicants  
12 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or  
13 another jurisdiction.

14 (3) For the purposes of subsection (2)(b) of this section, a conviction for a driving offense in  
15 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content  
16 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years  
17 of age or older does not constitute a prior conviction.

18 **SECTION 16.** ORS 813.602 is amended to read:

19 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while  
20 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-  
21 partment of Transportation, in addition to any other requirement, shall require that the person have  
22 installed and be using an approved ignition interlock device in any vehicle operated by the person:

23 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the  
24 hardship permit for the duration of the hardship permit.

25 (b) For a first conviction, for one year after the ending date of the suspension or revocation  
26 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A  
27 traffic violation.

28 (c) For a second or subsequent conviction, for two years after the ending date of the suspension  
29 or revocation caused by the conviction. Violation of the condition imposed under this paragraph is  
30 a Class A traffic violation.

31 (2) When a person is convicted of a crime or multiple crimes as described in this subsection, the  
32 department, in addition to any other requirement, shall require that the person have installed and  
33 be using an approved ignition interlock device in any vehicle operated by the person for five years  
34 after the ending date of the longest running suspension or revocation caused by any of the con-  
35 victions. Violation of the condition imposed under this subsection is a Class A traffic violation. A  
36 person is subject to this subsection when the person is convicted of:

37 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal  
38 ordinance and any of the following crimes as part of the same criminal episode:

39 (A) Any degree of murder.

40 (B) Manslaughter in the first or second degree.

41 (C) Criminally negligent homicide.

42 (D) Assault in the first degree.

43 (b) Aggravated vehicular homicide.

44 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal  
45 ordinance and the person’s driving privileges are revoked under ORS 809.235 (1)(b) and later ordered

1 restored under ORS 809.235 (4).

2 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while  
3 under the influence of intoxicants diversion agreement:

4 (A) The court shall require that an approved ignition interlock device be installed and used in  
5 any vehicle operated by the person during the period of the agreement when the person has driving  
6 privileges if:

7 (i) A chemical test of the person's breath or blood disclosed a blood alcohol content of 0.08  
8 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of  
9 the breath or blood;

10 (ii) The person refused to submit to a chemical test of the person's breath or blood; or

11 (iii) A chemical test of the person's breath, blood or urine disclosed a blood alcohol content of  
12 more than 0.00 but less than 0.08 percent by weight of alcohol in the blood of the person as shown  
13 by chemical analysis of the breath or blood and disclosed the presence of [*cannabis, psilocybin, a*  
14 *controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor.**

15 (B) The court may require that an approved ignition interlock device be installed and used in  
16 any vehicle operated by the person during the period of the agreement when the person has driving  
17 privileges if the person submitted to a chemical test of the person's breath, blood or urine and the  
18 test disclosed a blood alcohol content below 0.08 percent by weight of alcohol in the blood of the  
19 person as shown by chemical analysis of the breath or blood.

20 (b) In addition to any action taken under ORS 813.255, violation of the condition imposed under  
21 this subsection is a Class A traffic violation.

22 (c) A court may exempt a person from the condition in a diversion agreement to have installed  
23 and be using an ignition interlock device if the court determines that the person meets the re-  
24 quirements for a medical exemption in accordance with rules adopted by the department under this  
25 section. A person granted a medical exemption under this paragraph shall carry proof of the medical  
26 exemption with the person while operating any vehicle.

27 (4) The department shall adopt rules permitting medical exemptions from the requirements of  
28 installation and use of an ignition interlock device under this section.

29 (5) When a person is required to install an ignition interlock device under subsection (2) of this  
30 section, the manufacturer's representative providing the device shall provide notice of any installa-  
31 tion or removal of the device or any tampering with the device to:

32 (a) The supervising court or to the court's designee, including but not limited to an agency or  
33 organization certified by the Oregon Health Authority under ORS 813.025;

34 (b) The district attorney or the city prosecutor; and

35 (c) The Oregon State Police.

36 **SECTION 17.** ORS 821.250 is amended to read:

37 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or  
38 an all-terrain vehicle if the person is the owner or other person having charge or control of a  
39 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to  
40 operate the vehicle across a highway who is:

41 (a) Incapable by reason of age, physical or mental disability; or

42 (b) Under the influence of [*intoxicating liquor, cannabis, psilocybin, controlled substances or*  
43 *inhalants*] **an intoxicant.**

44 (2) In addition to other penalties provided by this section, operators or owners may be liable  
45 as provided under ORS 821.310.

1 (3) The offense described in this section, permitting dangerous operation of a snowmobile or an  
2 all-terrain vehicle, is a Class A traffic violation.

3 **SECTION 18.** ORS 146.113 is amended to read:

4 146.113. (1) A medical examiner or district attorney may, in any death requiring investigation,  
5 order samples of blood or urine taken for laboratory analysis.

6 (2) When a death requiring an investigation as a result of a motor vehicle accident occurs  
7 within five hours after the accident and the deceased is over 13 years of age, a blood sample shall  
8 be taken and forwarded to an approved laboratory for analysis. Such blood or urine samples shall  
9 be analyzed for the presence and quantity of ethyl alcohol, and if considered necessary by the Chief  
10 Medical Examiner, the presence of [*cannabis or controlled substances*] **any other intoxicants**.

11 (3) Laboratory reports of the analysis shall be made a part of the Chief Medical Examiner's and  
12 district medical examiner's files.

13 **SECTION 19.** Section 2 of this 2023 Act and the amendments to ORS 146.113, 801.272,  
14 807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040, 813.131, 813.215, 813.220, 813.300,  
15 813.430, 813.602 and 821.250 by sections 3 to 18 of this 2023 Act apply to conduct occurring on  
16 or after the effective date of this 2023 Act.

17